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FILED

2008 JUN 23 PM 3:35

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY Kult DEPUTY

Attorney for Plaintiffs, MARGARITA RODRIGUEZ, and MARIA WHITE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARGARITA RODRIGUEZ, and MARIA
WHITE,

Plaintiffs,

vs.

UNITED STATES OF AMERICA and
DOES 1 through 20, Inclusive,

Defendants.

CASE NO:

08 CV 1116 WQH LSP

COMPLAINT FOR DAMAGES
(NEGLIGENCE AND FRAUD AND
DECEIT)

COMES NOW: Plaintiffs MARGARITA RODRIGUEZ and MARIA WHITE who allege as follows:

1. This action arises under the Federal Tort Claims Act, 28 U.S.C § 2671 et seq., and this court has jurisdiction under the provisions of 28 U.S.C. §1346(b).

2. Plaintiffs have complied with the claim procedures set forth at 28 U.S.C. §2675. Plaintiffs timely submitted their claims to Department of the Navy, Navy Legal Services office-South West. Written denials of these claims were made. Accordingly, this court has original jurisdiction pursuant to the Federal Tort Claims Act.

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1 3. Venue is properly laid in this court because plaintiffs Margarita Rodriguez and
2 Maria White are citizens and residents of San Diego County, California, and the causes of action
3 by which this action is based arose in this county.

4 4. Defendants, DOES 1 through 20, inclusive, are sued herein under fictitious
5 names. Their true names and capacities are unknown to plaintiffs. When the true names and
6 capacities are ascertained, plaintiffs will amend this complaint by inserting their true names and
7 capacities herein. In doing the things hereinafter alleged, Defendants DOES 1 through 20, acted
8 as the agents, servants and employees of their co-defendants, acting within the course and scope
9 of said agency and employment, and with the knowledge, consent, and approval of their co-
10 defendants; their conduct was either authorized in advance or ratified by their co-defendants.

11 5. Plaintiffs are informed and believe and therein allege, that at all times herein
12 mentioned, Thomas J. Portz was employed by the United States Navy and was a claims attorney
13 working in his course and scope of employment by the United States of America.

14 6. On or about May 13, 2004 at approximately 3:15 p.m. plaintiffs were driving their
15 respective vehicles approaching the guard station entrance at Naval Medical Center-San Diego
16 when anti terrorism security bollards suddenly deployed ahead of them. Neither plaintiff was
17 able to avoid colliding with the bollards causing both plaintiffs to sustain physical injuries and
18 damages.

19 7. Timely Tort Claims were initiated by plaintiffs against The Department of the
20 Navy, which was subsequently denied. A letter received by plaintiffs attorney, from Tomas J.
21 Portz, claims attorney for the Department of the Navy dated February 24, 2005 stated:
22 "Examination of the facts indicates that the United States of America is not liable under the
23 Federal Tort Claims Act...for this incident. Federal employees did not cause the damage or
24 injury through negligence in the course and scope of federal employment."

25 8. Plaintiffs proceeded under negligence, products liability and strict liability claims
26 against the manufacturer of the bollards, Delta Scientific, based on attorney Portz
27 representations. Litigation was commenced. In the course of discovery, the deposition of
28 Raymond Boggess, Naval Hospital facility manager, was taken on April 16, 2007. Mr. Boggess

1 testified that it was, in fact, he himself who had caused the bollards to deploy while bleeding the
2 system and that Delta Scientific was in no way responsible.

3 9. Further investigation by attorneys for Delta Scientific uncovered investigation
4 reports performed by The Navy which had not been disclosed to Delta Scientific until just prior
5 to Mr. Boggess deposition, which clearly faulted the Navy for this accident. These investigation
6 reports were clearly available and, were completed prior to Attorney Portz letter of February 24,
7 2005. As a result of Mr. Boggess' deposition testimony, plaintiffs lawsuit against Delta
8 Scientific was dismissed.

9 10. Plaintiffs are informed and believe that when Attorney Portz, on behalf of the
10 United States of America, wrote his letter he knew his representations about the Federal
11 employees lack of involvement were false and that attorney Portz made these representations
12 with the intent to induce plaintiffs not to file a lawsuit against the United States of America.

13 11. At the time Attorney Portz' representations were made, plaintiffs were unaware of
14 their falsity, but believed them to be true. Had plaintiffs been aware of the true facts they would
15 have proceeded against the United States of America and not Delta Scientific.

16 12. As a direct and proximate result of defendant's intentional misrepresentation,
17 plaintiffs were injured in their health and activities and have suffered and will continue to suffer
18 pain and mental anguish in the future and have incurred and will continue to incur, medical
19 expenses, lost earnings and other general damages according to proof at trial.

20 13. Plaintiffs incorporate by reference all allegations contained in paragraphs 1-12 of
21 this complaint as though fully set forth herein.

22 14. Defendants, UNITED STATES OF AMERICA and DOES 1-20 are now and at all
23 times mentioned in this complaint had the duty of maintaining and inspecting the anti-terrorist
24 barriers or bollards.

25 15. On May 13, 2004, on separate instances and times both plaintiffs Margarita
26 Rodriguez and Maria White were driving their respective vehicles through the security guard
27 stall at the entrance to the Naval Medical Center San Diego when the barrier/bollard
28 malfunctioned by popping up suddenly without warning causing each plaintiffs vehicle to collide

1 forcefully with the barrier/ballard and causing each plaintiff to sustain serious physical injuries as
2 alleged in paragraph 12 of this complaint.

3 16. At all times mentioned in this complaint defendants United States of America and
4 Does 1-20 so negligently and carelessly inspected and maintained the barrier/bollard that their
5 were dangerous and unsafe for its intended uses and to persons like plaintiffs.

6 17. As a direct and proximate result of the negligence and carelessness of defendants
7 as described above each plaintiff sustained serious injuries and damages according to proof at
8 trial.

9 Wherefore, plaintiffs demand judgement against Defendants, and each of them for the
10 following:

11 1. Margarita Rodriguez: \$5,047. for property damage to her vehicle and \$25,000. for
12 compensatory damages for her physical injuries and pain and suffering.

13 2. Maria White: \$7,000. for property damage to her vehicle and \$150,000. for
14 compensatory damages for her physical injuries and pain and suffering

15 3. Costs in this action


16 4. Such other remedies as the Court may deem proper.

17 5. Demand for jury trial.

18
19 Dated: June 2, 2008

THE SEXTON LAW FIRM

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21
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23 By: _____


James F. Sexton
Attorney for Plaintiffs,
Margarita Rodriguez and Maria White

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Margarita Rodriguez and Maria White

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) San Diego

DEFENDANTS

2008 JUN 23 PM 3:30

United States of American and Does 1 through 20, Inclusive
COURT
SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) BY Y. J. J. J. DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

James F. Sexton, SB 149632
THE SEXTON LAW FIRM
3130 Bonita Road, Suite 104
Chula Vista, California 91910

ATTORNEYS (IF KNOWN)

'08 CV 11 16 WQH LSP

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | PT | DEF |
|---|---|-----|---|---|
| Citizen of This State | | | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2671 et seq. and 1346(b)

Government employee caused anti terrorist barriers to
deploy causing injuries to Plaintiffs.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (incl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

\$187,047.00

Check YES only if demanded in complaint:

JURY DEMAND ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

JAC 4350 6/23/08 #152192
::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

CR

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152192 - TC

June 23, 2008
15:32:46

Civ Fil Non-Pris

USAO #: 08CV1116

Judge.: WILLIAM Q HAYES

Amount.: \$350.00 CK

Check#: BC10120

Total-> \$350.00

FROM: MARGARITE RODRIGUEZ AND
MARIA WHITE VS. USA DOES 1-20